

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
STATE, et al.,

Federal Defendants.

No. 2:20-cv-00111-RAJ

**NOTICE REGARDING  
SCOPE OF RELIEF**

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Pursuant to this Court's direction at the February 28, 2020 hearing, the parties have conferred regarding the scope of relief sought by Plaintiffs in connection with their motion for a preliminary injunction, ECF No. 55, and Defendants' ability to feasibly implement any such relief ordered by the Court. The Court specifically inquired as to how an injunction could be entered that maintained the status quo with respect to the export control of 3-D firearms files posted on the Internet, while avoiding the substantial harm to the export control regulations and activities of the Departments of State and Commerce, to the national security and foreign policy interests of the United States, and to the interests identified by the intervenor-Defendants.

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2  
3 The parties conferred between March 2, 2020 and March 4, 2020 regarding such relief.  
4 Defendants oppose the entry of any injunctive relief, and continue to maintain that this Court  
5 does not have jurisdiction and Plaintiffs do not have a likelihood of success on the merits or  
6 raise any substantial questions as to the merits. Defendants reserve the right to appeal any  
7 injunction. Defendants specifically oppose the proposed relief set forth in Plaintiffs' March 4,  
8 2020 filing, ECF No. 89, and have concerns about the feasibility of severing regulation of  
9 "technical data" from the regulation of the underlying defense articles.

10 If, assuming the Court were to conclude that it has jurisdiction over this case, that  
11 judicial review has not been barred by Congress, that the Plaintiffs have demonstrated a  
12 likelihood of success on the merits, and that the factors favor entry of a preliminary injunction,  
13 have been satisfied, Defendants state the following with the respect to the scope of any  
14 injunction that the Court may decide to enter.

15  
16 First, if the Court concludes that the "published" exemption from jurisdiction under the  
17 International Traffic in Arms Regulations (ITAR) is broader than the "public domain"  
18 exception under the Export Administration Regulations (EAR) with respect to 3-D firearms  
19 files, and that irreparable harm to Plaintiffs would therefore occur on implementation of the  
20 Final Rules, Defendants have concluded that the Department of Commerce could, as a  
21 technical matter, implement an injunction that ordered the Department of Commerce to treat  
22 the EAR's "published" exemption as identical to the ITAR's "public domain" exemption for all  
23 3-D firearms files.

24  
25 Second, if the Court concludes that the category of 3-D firearms files regulated by the  
26 revised 15 C.F.R. § 734.7 of the EAR does not cover all 3-D firearms files for firearms, frame,  
27 and firearms receivers that have been previously regulated by the ITAR, and that as a result,

1 irreparable harm to Plaintiffs would occur on implementation of the Final Rules, Defendants  
2 also have concluded that the Department of Commerce could, as a technical matter, implement  
3 an injunction that maintained jurisdiction over all Internet postings of “software” or  
4 “technology” to produce a firearm, or firearm frame, or receiver, controlled under ECCN  
5 0A501 by means of 3-D printing.

6  
7 As an example of how the Department of Commerce could feasibly comply with an  
8 injunction requiring both of the above, Defendants have attached Exhibit 1.<sup>1</sup> However,  
9 Defendants reiterate that they do not agree that the Court should enter any injunction, and  
10 explicitly reserve their rights to appeal any preliminary injunction entered, as well as their  
11 rights to, at any time, issue a new NPRM that proposes to change the scope of regulation of the  
12 3-D firearms files at issue in this litigation, consistent with their statutory authorities.

13 Further, Defendants do not agree that the Court, if it concludes a preliminary injunction  
14 is warranted, should require Defendants to specifically comply by issuing Exhibit 1. It would  
15 be clear legal error for the Court to enter an injunction that would put such a regulation into  
16 place. *See Bresgal v. Brock*, 843 F.2d 1163, 1171 (9th Cir. 1987). The Court does not have the  
17 authority to do so, or to otherwise deprive Defendants of the ability to tailor their regulations to  
18 accomplish any substantive requirement that the Court determines is required in response to  
19 Plaintiffs’ motion for a preliminary injunction. As noted, Defendants specifically reserve their  
20 right to appeal any injunction, including any order requiring that the regulatory provisions at  
21 issue in Exhibit 1 be revised as set forth therein.

22  
23 Rather, Defendants have provided a copy of Exhibit 1 to Plaintiffs to facilitate  
24 Plaintiffs’ ability to review and indicate whether or not they contend that they would be  
25 irreparably harmed if Defendants were to use this approach to comply with a preliminary

26  
27 <sup>1</sup> This or other notification of Defendants’ intended means to comply with an injunction could  
be promptly posted online and then published in the Federal Register as soon as feasible as an  
interim final rule.

1 injunction -- again assuming the Court were to conclude, over Defendants' objections, that the  
2 Court has jurisdiction and that the factors support entry of a preliminary injunction to require  
3 that "the Department of Commerce maintain the same level of regulation of the export of 3-D  
4 firearms files through posting on the Internet that existed prior to the Final Rules." As of the  
5 time of filing, Plaintiffs have not indicated whether or not they contend they would be  
6 irreparably harmed if Defendants were to use this approach.

7  
8 Dated: March 5, 2020

Respectfully submitted,

9 JOSEPH H. HUNT  
Assistant Attorney General

10 ANTHONY J. COPPOLINO  
11 Deputy Director, Federal Programs Branch

12 /s/ Eric J. Soskin  
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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 5th day of March, the forgoing Notice of Appearance will be served electronically on all counsel who have appeared in this action by means of the Court's CM/ECF software.

Dated: March 5, 2020

/s/ Eric J. Soskin  
ERIC J. SOSKIN